

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CLAUDIO ORELLANA,

Plaintiff,

ORDER

-against-

23 Civ. 5315 (NSR) (AEK)

JOSE A. LOPEZ, JR., *et al.*,

Defendants.

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THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.

At an in-person conference held on October 25, 2024, the Court addressed discovery disputes raised in letters filed at ECF Nos. 68-72, 76-77, and ordered as follows:

- (1) Dr. Merola's affidavit, which has already been produced, shall be subject to a confidentiality and protective order. The affidavit must therefore be re-produced with the header "CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER." The terms of the confidentiality and protective order are as follows:
 - a. Any person who receives the affidavit may use it solely in connection with this litigation.
 - b. Disclosure is limited to the parties themselves, Defendants' counsel, Plaintiff's counsel, employees of counsel working on this case, consultants or experts assisting in the litigation of this matter (if necessary), and the Court, any court employees working on this matter, or any mediator who may eventually assist the parties in this case.
 - c. Prior to disclosing the confidential information, counsel must inform the person receiving the confidential information that the information being disclosed is confidential, and inform the person that this Court has enjoined the use of the information for any purpose other than this litigation and has enjoined the disclosure of the information to any other person.

- (2) The previously ordered expert discovery schedule (*see* ECF No. 74) remains in place:
- a. Defendants must produce the materials referenced by Dr. Reinhart in his expert report by October 28, 2024, with the exception of the two documents identified by Defendants' counsel at the October 25, 2024 hearing. Those two additional documents are to be produced as soon as possible, and no later than November 4, 2024.
 - b. Plaintiff's rebuttal expert report is to be served by December 4, 2024.
 - c. Any deposition of Plaintiff's rebuttal expert is to be conducted by December 20, 2024.
- (3) By November 1, 2024, Defendants must inform Plaintiff whether the video of the incident still exists in, and can be extracted from, Defendants' security system. If not, then by November 8, 2024, Defendants must provide an affidavit to Plaintiff explaining how the video that has been produced in discovery was extracted, maintained, and produced.
- (4) By December 5, 2024, Plaintiff may either serve and file a motion for spoliation sanctions regarding the video of the incident, or inform the Court by letter that he has decided not to do so. If Plaintiff files a spoliation motion, then Defendants' opposition is to be served and filed by December 19, 2024.

The Court again notes that the issue of the authenticity of the video of the incident and the potential admissibility at trial of that video and expert testimony predicated on the video are all matters that should be raised as motions *in limine* in advance of trial, and should therefore be addressed to Judge Román when he sets a schedule for pretrial submissions.

- (5) Defendants' objection to the production of copies of reports by Dr. Casden from cases in the last 10 years in which he was designated, appeared, or was involved as an expert is sustained.
- (6) By December 23, 2024, the parties must file a letter addressed to Judge Krause to (i) confirm that all discovery is complete and that the parties still do not want to schedule a settlement conference, and (ii) state whether the spoliation motion, if one has been filed, should be decided prior to the filing of a motion for summary judgment.

- (7) Unless the Court orders otherwise, in accordance with Judge Román's October 16, 2024 order, the parties must file any pre-motion letters seeking leave to file a dispositive motion by December 27, 2024, with any responsive letters to be filed by December 30, 2024.

Dated: October 28, 2024
White Plains, New York

SO ORDERED.



ANDREW E. KRAUSE
United States Magistrate Judge